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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,995	05/10/2001	Charles P. Hall	1245.02	4129

27353 7590 06/15/2005

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EXAMINER
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MEREK, JOSEPH C

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/851,995

Applicant(s)

HALL

Examiner

Joseph C. Merek

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 4 and 5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claim of U.S. Patent No. D 462,149. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art to vary the size and the number of openings in the sidewalls to provide adequate venting for the contents of the hamper. Regarding claim 5, it would have been obvious to one of ordinary skill in the art to employ a snap or press-fit lid to prevent the contents from escaping the hamper while transporting the hamper.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 4 and 5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 4, it has not been disclosed that the apertures are "substantially uniformly disposed" within each lateral sidewall. This claim limitation is not supported by the disclosure. The specification is silent with respect to "substantially uniformly disposed". Fig. 2 of the instant invention shows that the apertures near the tapered end walls are closer to the end walls at the bottom of the container than they are at the top of the container. This is a new matter rejection. The remaining claims are included since they stem from rejected claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 4, it has not been disclosed that the apertures are "substantially uniformly disposed" within each lateral sidewall. This claim limitation is not supported by the disclosure. The specification is silent with respect to "substantially uniformly disposed". Fig. 2 of the instant invention shows that the apertures near the tapered end walls are closer to the end walls at the bottom of the container than they are at the top of the container. Moreover, the spacing between the three groups of apertures is greater than the spacing between the individual apertures

of each group. The meets and bounds of this limitation cannot be determined since the limitation has not been disclosed or described in the specification. The remaining claims are included since they stem from rejected claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Haimen (US 3,286,877). Regarding claim 4, see Figs. 1-3 where the claimed structure is shown. The means for selectable slideable receipt of one or more vertical partitions is the vertical channels 3 seen in the sidewalls. The claims do not require the partitions. Applicant discloses that the partitions are held in place by vertical channels. These channels in the reference are equivalents to that of applicant. As the claim is best understood, the apertures are substantially uniformly disposed on the sidewall. The term substantially is a broad term and allows for a great deal of variation from exactly uniformly. Moreover, see Fig. 1, where the openings are disposed from each other a uniform distance within each panel section. The container of Haimen is capable of carrying laundry or functioning as a hamper. The device is substantially rectangular as

seen in Fig. 2. Regarding claim 5, see Col. 4, lines 9-15 where the press or snap fit lid is disclosed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baines et al (US D 433,548) in view of Capelli (US 3,958,715). Regarding claim 4, Baines et al teaches the claimed hamper with dividers but does not teach the dividers being removable. Capelli as seen in Figs. 1-3, teaches a removable divider. It would have been obvious to make the dividers of Baines et al removable as taught by Capelli to allow the user to vary the number or size of the compartments. It is inherent that the openings of Baines et al are in the claimed range of one-third to two-thirds the lateral wall. The openings are spaced in a similar manner and the area of the openings will fit within the broad range. As the claim is best understood, the apertures in each group of apertures are uniformly spaced from each other. The device of Baines et al is substantially rectangular as seen in Fig. 5.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baines et al in view of Capelli as applied to claim 4 above, and further in view of Gerber (US D

265,261). Regarding claim 5, the modified device of Baines et al does not teach the press fit lid. Gerber as seen in Fig. 7, teaches a similar device with a press fit lid. It would have been obvious to employ the lid of Gerber in the modified device of Baines et al to prevent the contents from escaping during transportation of the container.

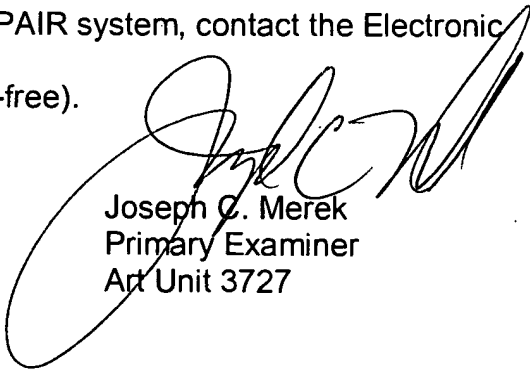
### ***Conclusion***

This is a non-final action due to the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is 571 272-4542. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek  
Primary Examiner  
Art Unit 3727